82-1124

Supreme Court, U.S.
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CASE NO.

in the Supreme Court of the United States

COURTNAY TAYLOR, HORACIO VELARDE, MIGUEL ROA and ADAM BUNILLO ALVAREZ,
Petitioners,

vs.

TRACOR MARINE, INC. and the M/V CIUDAD DE LEON, her engines, tackle, motors, sails, etc.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT

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I.

QUESTIONS PRESENTED FOR REVIEW

A.

WHETHER THE INSTANT CAUSE PRESENTS A SUBSTANTIAL FEDERAL QUESTION, WHICH HAS NOT BEEN, BUT SHOULD BE SETTLED BY THIS COURT, TO WIT: WHETHER SEAMEN PROCEEDING WITHOUT PREPAYMENT OF COSTS ARE REQUIRED TO POST SUPERSEDEAS TO STAY EXECUTION OF ADVERSE FINAL JUDGMENTS WHICH JUDGMENTS ORDER IMMEDIATE DISTRIBUTION OF FUNDS TO INFERIOR LIEN HOLDERS WHERE REQUEST BY SEAMEN FOR STAY PENDING APPEAL WAS MADE TO THE TRIAL COURT, STAY WAS DENIED AND, ON APPEAL FROM ALL ADVERSE ORDERS, THE APPELLATE COURT DISMISSED SEAMEN'S APPEALS ON THE GROUND OF "NO JURISDICTION—THE RES IS GONE, THE APPEALS ARE MOOT".

B.

WHETHER PETITIONERS HAVE BEEN DENIED THEIR CONSTITUTIONAL RIGHTS REGARDING ACCESS TO THE COURTS, DUE PROCESS AND EQUAL PROTECTION OF THE LAW WHERE THE TRIAL COURT, AFTER FINDING FOR THE SEAMEN ON SEVERAL OF THEIR CLAIMS FOR WAGES AND AGAINST THEM ON OTHERS, ORDERED IMMEDIATE DISTRIBUTION OF ALL FUNDS, DENIED SEAMEN'S MOTIONS FOR STAY AND EMERGENCY RELIEF AND SEAMEN'S APPEALS FROM ALL ORDERS – FINAL JUDGMENTS AND ORDERS DENYING STAY – WERE DISMISSED BY THE APPELLATE COURT, ON THE GROUNDS OF "NO JURISDICTION – THE RES IS GONE. THE APPEALS ARE MOOT."

II.

INTRODUCTION/LISTING OF PARTIES

The petitioners (appellants below), COURTNAY TAYLOR, HORACIO VELARDE, MIGUEL ROA and ADAM BUNILLO ALVAREZ, were intervening plaintiffs in the trial court. The respondent, TRACOR MARINE, INC. (appellee below) was also an intervening plaintiff. The petitioners and respondent, TRACOR, (along with other entities) all sought monies allegedly due and owing them from the fund created by the seizure and sale of the (respondent) M/V CIUDAD DE LEON, her engines, tackles, motors, sails, etc.

In this Petition for Writ of Certiorari the parties will be referred to as the petitioners and the respondent and, where necessary for clarification, by name. The symbol "A" will be used to designate the petitioners' rule-required appendix which accompanies this petition. All emphasis has been supplied by counsel unless indicated to the contrary.

III.

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V.

REFERENCE TO REPORTS AND OPINIONS

The opinion (herein sought to be reviewed) of the United States Court of Appeals for the Eleventh Circuit appears in the appendix to this petition (A.1,2).

VI.

JURISDICTIONAL STATEMENT

The opinion of the lower court was entered on August 23, 1982 and rendered upon denial of rehearing on October 6, 1982. Certiorari has been instituted pursuant to 28 U.S.C. 1254(1); 28 U.S.C., Supreme Court Rules, Part V, Rules 19, 21 and 22.

The petitioners believe this Court should exercise its certiorari discretion as this case presents:

A. A substantial federal question;

B. Issues concerning deprivation of seamen's constitutional rights through, at the very least, a deficiency in procedural rules; and

C. An appellate court decision dismissing seamen's appeals, the effect of which has caused the sanctioning of a lower court's departure from accepted and usual judicial proceedings so as to call for an exercise of this Court's supervision.

VII.

STATEMENT OF THE CASE AND FACTS

The relevant facts of this case may be gleaned from an examination of the opinion herein sought to be reviewed (A.1,2). In view of the fact that the merits of the subject appeals were not reached by the lower court, petitioners will respectfully refrain from any unwarranted discussion of the alleged legal errors committed by the trial court prior to its entry of the orders forming the basis for this proceeding. From the subject opinion it is learned:

> This case arose when certain crew members of the M/V CIUDAD DE LEON sued in rem against the vessel to obtain seamen's wages and penalty wages from their employer. The appellants, all of whom were crew members, and TRACOR MARINE, which held a maritime lien on the vessel as a result of shipyard services, were intervening plaintiffs in that action. The vessel was seized and ultimately sold (to TRACOR MARINE), with the proceeds subject to priority liens.
>
> "The trial court conducted a hearing to determine the amount to which the crew members were entitled. The court entered final judgments awarding various sums to the crew members and the remainder of the sale proceeds to TRACOR MARINE, and it authorized *immediate* execution and the disbursement of *all funds* in the registry of the court. The appellants filed a memorandum opposing the

disbursement of the funds and an emergency motion to prevent the disbursement pending an appeal. The motion was denied and the funds were disbursed.

"The appellants contend that the District Court erred in its determination of the amounts due the seamen and in its release of funds to an inferior lien holder where the priority lien holders have exercised their right to appeal the order regarding entitlement to recovery. The appellee disputes these contentions and additionally challenges jurisdiction.

"The trial court's in rem jurisdiction in a case such as this may be furnished by a vessel, the proceeds of the judicial sale of the vessel, or security furnished in lieu thereof. (Citations omitted). However, where the res is no longer before the court, its in rem jurisdiction is destroyed and any appeal from its decision is rendered moot. (Citations omitted). The latter rule is dispositive of this case.

"The appellants vigorously resisted the trial court's order to disburse all proceeds received from the sale of the M/V CIUDAD DE LEON, but they were unsuccessful at the trial court level and they did not seek extraordinary relief from this Court to *prevent* disbursement. Moreover, they did not file a supersedeas bond in order to obtain a stay upon appeal. The proceeds having been disbursed, any order which we might issue in this case would be an

empty gesture. Consequently, this appeal is rendered moot and must be DISMISSED." (A.1,2).

Petitioners petition for rehearing (and rehearing en banc) being denied (A.3), this proceeding was instituted.

VIII.

REASONS FOR GRANTING THE WRIT— ARGUMENT THEREON

What transpired herein is relatively uncomplex but exceedingly significant. Petitioners, being successful on only a portion of their claims for wages, sought appellate review of those issues decided adversely to them. The trial court thwarted any attempt that the petitioners made to successfully appeal the adverse final judgments by ordering an immediate disbursement of the funds and denying all of the petitioners' attempts to keep the res before the court. (A.4,5). Petitioners appealed "every order in sight". The appellate court dismissed petitioners' appeals, reasoning that:

> ". . . Where the res is no longer before the court, its in rem jurisdiction is destroyed, and any appeal from its decision is rendered moot." (A.1).

The Court noted petitioners' efforts to "stay in court" but stated:

". . . They did not seek extraordinary relief from this Court to prevent disbursement. Moreover, *they* did not file a supersedeas bond in order to obtain a stay upon appeal . . ."

The petitioners would suggest to this Court the opinion sought to be reviewed is without legal or logical support. Its effect is to deny the subject petitioners access to the appellate courts in this country; to deny the petitioners due process and equal protection of the law; and, for the reasons to be discussed, infra, said opinion should be quashed with directions to the lower court to reinstate petitioners' appeals for consideration on the merits.

At the outset, it must be emphasized that dismissal of the subject appeals predicated upon the theory that the petitioners failed to file a supersedeas bond in order to obtain a stay upon appeal is *contrary* to the general law authorizing seamen to proceed without prepayment of costs.

Secondly, dismissal of the subject appeals predicated upon the general rule that where the res is no longer before the court jurisdiction is destroyed and any consequent appeal therefrom is rendered moot should *not apply* under the facts of this case.

Third, dismissal of the subject appeals upon authority of *Parks v. B.F. Leaman & Sons, Inc.*, 279 F.2d 529, 532 (5th Cir. 1962); *The Manuel Arnus*, 141 F.2d 585 (5th Cir.), *cert. denied sub nom. Compania Transatlantica v. The Manual Arnus*, 323 U.S. 728, 65 S.Ct. 63, 89 L.Ed. 584 (1944); *Canal Steel Works, Inc. v. One Drag Line Dredge*, 48 F.2d 212 (5th Cir.), *cert. denied*, 284 U.S.

647, 52 S.Ct. 29, 76 L.Ed. 550 (1931); *American Bank of Wage Claims*, 431 F.2d 1215 was simply not *warranted*.

The cases cited by the lower court in support of the result reached did not involve seamen who are authorized to proceed in the courts of this country without prepayment of costs. In fact, the cases involved factual circumstances wherein *no action was taken at all* to keep the funds in the registry of the court pending appeal. Contra, the instant cause wherein, at all times relevant, petitioners repeatedly moved the trial court for relief, *specifically requesting* that the trial court *not* disburse the funds. At all times crucial the petitioners sought emergency hearing to withhold distribution of the funds and informed the trial court that disbursement of the funds would defeat the petitioners' right to appeal. No relief was given!

The petitioners are seamen and as such are wards of the court. They are entitled to the courts' protection, are authorized to file suit without prepayment of costs, can file suit without prepayment of costs and can appeal without prepayment of costs. Dismissal of the subject appeals was totally inconsistent with these principles. Rights given to the seamen were taken away and a burden was imposed. The burden was imposed to such an extent and in such a manner that the subject petitioners had no chance to meet the burden no matter what they did. The effect of the rulings and orders entered herein rewards seamen's adversaries who, if successful in convincing a trial court judge to immediately disburse funds, can defeat a seaman's right to appeal by "playing the money game".

The subject opinion notes that the petitioners did not seek mandamus to require the trial court to take "action" to preserve the res. The petitioners would respectfully call to this Court's attention the fact that the trial court judge in the instant cause *simultaneously:* denied the motion to prevent disbursement of funds; disbursed all remaining funds; and, entered final judgment. If there is a "requirement" that an appellant seek mandamus, same was effectively thwarted by the actions of the trial court judge when it entered the subject orders.

In the instant cause the trial court judge was requested by the petitioners not to disburse the funds. Yet the trial court judge disbursed the funds. While the appellate court talks of "mandamus", in truth and in fact the trial court had "jurisdiction" to enter an order disbursing the funds. Whether the trial court was right or wrong in so doing is of no import at this juncture. For the appellate court to sanction a rule of law requiring the taking of "mandamus" would lead to the absurd result that there be reinstituted a rule requiring a race to the various courthouses. Indeed, it would be a race that the subject petitioners could never win. Once th order of disbursement and/or final judgments were entered, mandamus would properly not lie. It is too well settled to need citation of authority that mandamus lies to *compel* a trial court judge to do something that he will not do. In the instant cause the trial court judge had already disbursed the funds, had already entered final judgment and, if mandamus was attempted by the petitioners, petitioners would be hearing "too little, too late" from the respondent and that the petitioners' only "remedy" would be to appeal the adverse orders. The petitioners were in a "no win" situation.

Could the petitioners obtain preliminary mandamus relief *before* the trial court judge and the clerk of the lower court disbursed the funds? Such is simply not a valid consideration, not a viable alternative and certainly is not consistent with the theory that seamen, as wards of the court, are entitled to its protection. Simply stated, there was no time for a mandamus action and, even assuming the time frame was such as to allow for the application for extraordinary relief, the end result would be totally inconsistent with the well settled principles of law that seamen are wards of the court and are entitled to protection. The circumstances did not even allow for the petitioners to post a bond—assuming such a requirement existed—which requirement does not exist.

The petitioners suggest to this Court the precise issue to be considered is: Whether seamen are required to post supersedeas to stay execution of adverse final judgments which order immediate disbursement of funds to inferior lien holders where a request for a stay was made to the trial court? The answer to this question should be in the negative.

Firstly, replacing any monies into the registry of the court should not be a consideration at all. This is so because the opinion itself recognizes that under certain circumstances where the removal of the res had been shown to be *accidental*, fraudulent or *improper*, relief was granted. Therefore, the difficulty factor should not have been a consideration utilized by the appellate court in dismissing the subject appeals.

Secondly, the subject opinion recognizes that the petitioners *did* vigorously resist the trial court's order

to disburse all proceeds. This circumstance alone takes this case outside of those authorities (cited and) holding that where the res is no longer before the court its in rem jurisdiction is destroyed and any appeal therefrom is moot. In the instant cause the petitioners did all they could possibly do to inform the trial court that they wanted a stay, that they desired to appeal, that they sought the protection of the court and they were dissatisfied with the trial court's award. No prejudice would have obtained to the respondent if the trial court had granted to the petitioners the requested relief.

The petitioners suggest to this Court disbursement of funds, pursuant to the trial court's direction, violated Rule E(5) of the Admiralty and Maritime Claims Provisions, dealing with the release of property. Specifically, that rule states that anytime process in rem is to be issued, *before the property is released* security must be given that is approved by the court or the clerk of the court, *conditioned to answer the judgment of the court or any appellate court.* In the instant cause, the respondent gave *no security* so as to allow the "in rem defendant" to be released, prior to an appellate court's ruling on the merits of the appeal. Therefore, it was the respondent who should have posted a bond to secure the judgment and the lower court's conclusion that the petitioners were at fault in not seeking mandamus to require the trial court to take such action is erroneous. Additionally, the existence of these rules demonstrates that the days of the "race to the courthouse" are gone. The passage of rules such as these contemplated, inter alia, doing away with racing to the courthouse to preserve the res.

In the instant cause the petitioner's cause of action was predicated upon "lost wages." As recognized in *Benedict on Admiralty*, Seventh Edition, Volume II, 4-1, Section 51, the order of priority on maritime liens is:

A. Costs of litigation;

B. Seamen's wages;

C. Salvage and general average;

D. Tort claims;

E. Contract claims;

F. State law costs and taxes;

G. Special government tax.

It is clear that seamen's wages take precedence over all other "liens" relevant herein. As recognized in *The Lillie Laurie*, 50 F.219 (Cir.Ct., Eastern District, Texas 1880), seamen wages are entitled to priority over all other claims. Seamen are entitled to be paid their claims in full before payment to any other lienholder. In the above cited case there was a cause of action predicated upon seamen's wages. Upon a decree entered, the monies in the registry of the court were disbursed in full pending the appeal by the seaman wage claimants. The issue decided by the appellate court dealt with whether or not the decrees were properly paid. The Court held they were not. As the Court recognized:

"The libel of Stevenson having been dismissed by the District Court, his right to priority of payment over the supplymen could only be settled in the Circuit Court, and that question was taken up by his appeal. All that the supplymen could insist on was that the amount of their claims should not be disturbed by the Circuit Court, that having been finally settled by the District Court. But, as long as Stevenson was prosecuting his appeal and claiming priority over them in the Circuit Court, they could not settle that question in their own favor by getting satisfaction . . ."

In the instant cause the trial court disbursed *all of the monies.* The petitioner's appeal was dismissed, upon successful argument made by the respondent that since all the monies had been disbursed, even assuming the petitioners prevailed, there would be no recourse since the res was gone. Dismissal under that rationale was error and left no appellate review to these petitioners. Further, such rationale would provide no appellate review to any appellant faced with the subject circumstances and would authorize no appellate review to anyone whenever a trial court judge deemed it advisable to distribute monies in the manner in which distribution was made herein. This becomes especially compelling since the subject petitioners are seamen authorized to proceed *without* prepayment of costs.

Seamen's wages have priority over all other maritime liens. The trial court should have entered appropriate stay orders ordering reasonable terms and conditions. By dismissing the subject appeals, the lower court

sanctioned a procedure whereby seamen lose their right to appeal through the simple expediency of having a trial court judge enter adverse final judgments against seamen and simultaneously order an immediate disbursement of funds. A subsequent denial of any motions for stay of proceedings: renders moot any mandamus proceedings, as the action was already taken; renders moot any appeal since the "res" is already gone; and, renders useless any attempts to ultimately gain relief in the appellate forum. The appellate court's conclusion that the petitioner's failure to post a supersedeas bond was fatal to their position is legally unsound and for the reasons previously advanced warrants this Court exercising its certiorari jurisdiction.

The petitioners suggest to this Court the opinion sought to be reviewed be quashed with directions to the lower court to reinstate petitioner's appeals for consideration on the merits.

IX.

CONCLUSION

Based upon the foregoing reasons and citations of authority, the petitioners respectfully urge this Honorable Court to take jurisdiction of the instant cause, to review the instant cause on the merits, to quash the opinion herein sought to be reviewed and to enter such other relief as this Court deems advisable under the circumstances.

Respectfully submitted,

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X.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Writ of Certiorari was served, by mail, this ____ day of January 1983 on: REGINALD M. HAYDEN, JR., P.A., 100 N.E. 1st Avenue, Miami, Florida 33132, Attorneys for Respondent, TRACOR MARINE, INC.

_____

Arnold R. Ginsberg